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EDGAR ALDRICH

JOHN LOWELL
WILLIAM SCHOFIELD
LEBARON B. COLT
GEORGE M. CARPENTER
ASHUR WARE

Presented at the dinner, given by the Massachusetts Bar Association in honor of the judges of the United States Courts for the First Circuit, at Boston, February 5, 1924.

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GEORGE WASHINGTON'S LETTER TO THE JUSTICES OF THE SUPREME COURT IN 1790

In the *American Jurist and Law Magazine* for October, 1830, there was published, apparently for the first time, the following letter addressed by George Washington, then serving his first term as President, to Chief Justice Jay and his associates, then about to enter upon their first circuit.

"UNITED STATES, April 3d, 1790.

GENTLEMEN: I have always been persuaded that the stability and success of the national government, and consequently the happiness of the people of the United States, would depend, in a considerable degree, on the interpretation of its laws. In my opinion, therefore, it is important that the judiciary system should not only be independent in its operations, but as perfect as possible in its formation.

As you are about to commence your first circuit, and many things may occur in such an unexplored field which it would be useful should be known, I think it proper to acquaint you that it will be agreeable to me to receive such information and remarks on this subject as you shall from time to time judge it expedient to make.

GEORGE WASHINGTON.

The Chief Justice and Associate Justices of the Supreme Court of the United States."

EXTRACT FROM MESSAGE OF PRESIDENT COOLIDGE TO CONGRESS IN DECEMBER, 1923.

"It is desirable to expedite the hearing and disposal of cases. A commission of Federal judges and lawyers should be created to recommend legislation by which the procedure in the Federal trial courts may be simplified and regulated by rules of court, rather than by statute; such rules to be submitted to the Congress and to be in force until annulled or modified by the Congress. The Supreme Court needs legislation revising and simplifying the laws governing review by that court, and enlarging the classes of cases of too little public importance to be subject to review. Such reforms would expedite the transaction of the business of the courts. The administration of justice is likely to fail if it be long delayed."

A BRIEF HISTORICAL OUTLINE OF THE ORGANIZATION OF THE FEDERAL COURTS IN THE FIRST CIRCUIT.

At the centennial celebration of the bench and bar of Maine in 1920, reported in volume 22 of the Maine State Bar Association reports, Hon. Clarence Hale delivered an address, on "A Century of the Federal Courts in Maine," which contains a great deal of interesting information in regard to the history of the courts and of the judges in that district. As he points out, during the Revolution,

"In 1778, Congress assumed appellate jurisdiction of all maritime causes, dividing Massachusetts into three districts, Southern, Middle and Northern; the last embraced the three eastern counties, York, Cumberland and Lincoln, and acquired a distinctive name, the 'District of Maine,' which it retained until the separation. . . . The General Court of Massachusetts conceded the jurisdiction to Congress, and authorized an appeal from the State Courts to that body whenever the subject of a foreign power in amity with the United States claimed a vessel or cargo captured or libelled, unless the claimant chose to waive the right of appeal and have a trial in the State Court. The judges of the maritime courts were judges in admiralty; and all persons charged with piracy or felony upon the high seas were tryable by any two judges of the State and the Admiralty Judge residing within it."

After the Federal Constitution was ratified, an act of 1789 divided the country into thirteen judicial districts and these districts (Maine and Kentucky excepted) into three circuits (eastern, middle, and southern). A circuit court was created, to be held for each district, and this continued until January 1st, 1912, when the act took effect which abolished the circuit courts and transferred their original jurisdiction to the district courts, but retained the circuit judges to exercise the appellate jurisdiction of the Circuit Court of Appeals and, if necessary, to sit also as judges of first instance in the district courts.

From 1789 to 1869 (except between February, 1801 and March, 1802) the only Federal judges were the Justices of the Supreme Court and the District judges. Originally the Supreme Court had six members, two being assigned to each of three cir-

cuits. These, together with the district judges, were required to hold a *circuit* court in each *district* (except Maine) twice in each year. Two of the three had to be present. Conditions of travel were not only dangerous, but so difficult that the Supreme Court judges had to spend a very considerable part of their time traveling over the country on horseback or in public or private conveyances. For judges of varying ages this was a serious ordeal and, as Judge Rose points out, "It is not surprising that at this period many gentlemen declined appointments to the Supreme Bench." The act of February 13, 1801, passed by the Federalists at the end of the administration of John Adams, while it relieved the Supreme Court justices by creating "circuit judges", was promptly repealed in 1802 by the Jeffersonians, who objected to what they termed the Federalist "midnight" judges appointed under that act.

The act of 1802 provided for six circuits, to each of which one Supreme Court justice was assigned, he and the district judge having concurrent power to hold the circuit courts alone. Naturally, as the country and the business grew, the work was thrown more and more on to the district judges. While the subject of further relieving the situation was continually discussed, nothing was done about it until 1869, when Congress authorized the appointment of one circuit judge for each of the circuits, then numbering nine. The circuit judge was given the powers of the "circuit justice" but the Supreme Court justices were not entirely relieved from duty as circuit justices". They were to continue to sit when they could and a requirement that they should attend at least one term of the circuit court in each district during every two years remained for a long time, although it was not physically practicable for them to comply with it regularly and it had to be generally disregarded as the burdens of the Supreme Court in Washington became greater.

In 1891 intermediate Circuit Courts of Appeal were created and the appellate jurisdiction was taken from the circuit courts. This left in each district two separate courts of original jurisdiction. The circuit courts in many circuits were ordinarily held by district judges, the circuit judges devoting themselves largely to the Circuit Court of Appeals. In 1912 the circuit courts were abolished and their jurisdiction transferred to the district courts. The Circuit Court of Appeals may be held by two judges, but ordinarily it sits with three, as in the English Courts of Appeal. As the Supreme Court justice was seldom available for circuit work

and as circuit judges sometimes sat to hear cases in the first instance and could not sit on appeals from their own decisions, it was provided that district judges might be called in to make up an appellate court of three. (For more detailed information see Judge Rose's "Federal Jurisdiction and Procedure," 2nd Ed.) In 1915, Porto Rico was added to the First Circuit.

Two things stand out from this brief story of Federal court organization;—first, the usual slowness in the growth of a legislative policy relating to courts which would have enabled them to meet more effectively the demands of the business of the people whom they were created to serve; second, the feature of elasticity in the use of judges in the various courts whether for appellate or nisi prius work. A history of the various Circuit and District Court Reports prior to the Federal Reporter System, and much biographical information will be found in volume 30 of the "Federal Cases".

F. W. G.

THE JUDICIAL INDEPENDENCE OF JOHN DAVIS AND JOSEPH STORY.

In view of the current criticism of the courts in general, the following striking instances of judicial independence, mentioned by Hon. Charles Warren in his address at Salem in 1922, will bear repeating here, as they are a credit to the First Circuit.

"On October 8, 1808, in the Court House in Salem, a decision was rendered which probably affected the history of the Nation to a greater degree than any judicial opinion ever rendered in this Commonwealth.

"John Davis, Judge of the United States District Court, was . . . an ardent and active Federalist, appointed by President Adams. All his friends and judicial associates were Federalists. Before him, there was argued the question of the constitutionality of Jefferson's Embargo Law, a measure detested and abhorred by the Federalists of this State, against which the State had risen in open revolt. . . .

"Strong in his judicial integrity, though amid the opprobrium of all his party associates, Judge Davis resisted all influence, and rendered a judgment sustaining the constitutionality of the Law, in an opinion so conclusive that it settled the question forever. It is interesting to surmise the strain to which the Judge's conscience would have been submitted, had the Judge been a candidate for re-election at the Presidential election which took place, just one month later, in Massachusetts, that fall."

(See Remarks of Franklin Dexter on the Resignation of Judge Davis, 1 Story 619-620, also memoir of John Davis by Rev. Convers Francis, Mass. Hist. Soc. Coll. vol. X, 3rd Series, 1849, p. 186.)

The act of Joseph Story referred to was as follows:

"Story had been appointed by President Madison on the Supreme Court, only ten months previous. He was a young man of 33 year of age. The War of 1812 had begun, and the Administration was vitally interested in prosecuting and convicting the cases of Americans who had been guilty of unlawful trade with the enemy, England. Such a case came up before Judge Story, in which the defendant pleaded that a proclamation of President Madison reviving an embargo law, under which the indictment had been found, was illegal. Judge Story was thus called upon to decide upon the legality of an action of a president who had just appointed him to office, and upon its legality as bearing upon a class of cases in which the president and his administration were vitally desirous of obtaining convictions.

"Story, in spite of his youth and his personal and political predilections, without hesitation held the action of the president to have been illegal, and the prisoner went free. 'For the Executive Department of the Government, this Court entertain the most entire respect,' said the judge, but 'it is our duty to expound the laws as we find them in the records of state; and we cannot, when called upon by the citizens of the country, refuse our opinion, however it differs from that of very high authorities. I do not perceive any reasonable ground to imply an authority in the President to revive this Act, and I must, therefore, with whatever reluctance, pronounce it to have been, as to this purpose invalid.'

"When one recalls the fact that a National election was to take place, that very fall, in Massachusetts and that administration forces might well have been arrayed against a judge who gave such a decision, had he been subject to the elective franchise, one may rejoice that Federal Judges are not subject to such possibilities."

(See MASS. LAW QUART., Dec., 1922.)

LIST OF JUSTICES AND JUDGES IN THE FIRST CIRCUIT SINCE 1789.

JUSTICES OF THE SUPREME COURT OF THE UNITED STATES ASSIGNED TO
THE FIRST CIRCUIT AS "CIRCUIT JUSTICES".

William Cushing, Mass.	1802-1810	Nathan Clifford, Maine	1858-1881
Joseph Story, Mass.	1811-1845	John M. Harlan, Ky.	1881-1882
Levi Woodbury, N. H.	1845-1851	Horace Gray, Mass.	1882-1902
Benjamin R. Curtis, Mass.	1851-1857	Oliver Wendell Holmes, Mass.	1902-

JUDGES OF THE CIRCUIT COURT FOR THE FIRST CIRCUIT CREATED BY ACT OF
FEBRUARY 13, 1801, AND ABOLISHED BY ACT OF MARCH 8, 1802.

John Lowell, Chief Judge, Mass. Benjamin Bourne, R. I.
Jeremiah Smith, N. H.

JUDGES OF THE DISTRICT COURTS SINCE 1789

DISTRICT OF MAINE.

David Sewall	1789-1818	Nathan Webb	1882-1902
Albion Keith Parris	1818-1822	Clarence Hale (retired)	1902-1922
Ashur Ware	1822-1866	John A. Peters	1922-
Edward Fox	1866-1881		

DISTRICT OF NEW HAMPSHIRE.

John Sullivan	1789-1795	Daniel Clark	1866-1891
John Pickering	1795-1804	Edgar Aldrich	1891-1921
John Samuel Sherburne	1804-1830	George Foster Morris	1921-
Matthew Harvey	1830-1866		

DISTRICT OF MASSACHUSETTS.

John Lowell	1789-1801	Francis Cabot Lowell	1898-1905
John Davis	1801-1841	Frederic Dodge	1905-1912
Peleg Sprague	1841-1865	James M. Morton, Jr.	1912-
John Lowell	1865-1878	James Arnold Lowell	1922-
Thomas Leverett Nelson	1879-1898	Elisha H. Brewster	1922-

DISTRICT OF RHODE ISLAND.

Henry Marchant	1790-1796	Jonathan Russell Bullock	1865-1869
Benjamin Bourne	1796-1801	John Power Knowles	1869-1881
David Leonard Barnes	1801-1812	LeBaron Bradford Colt	1881-1884
David Howell	1812-1824	Geo. Moulton Carpenter	1885-1896
John Pitman	1824-1864	Arthur L. Brown	1896-

CIRCUIT JUDGES APPOINTED SINCE THE ACT OF APRIL 10, 1869.

George Foster Shepley, Maine.....	Appointed 1869-1878
John Lowell, Mass.	Appointed 1878-1884
LeBaron Bradford Colt, R. I.	Appointed 1884-1913
William Lebaron Putnam, Maine.....	Appointed 1892-1917
Francis Cabot Lowell, Mass.....	Appointed 1905-1911
William Schofield, Mass.	Appointed 1911-1912
Frederic Dodge, Mass.	Appointed 1912-1918
George Hutchins Bingham, N. H.	Appointed 1913-
Charles F. Johnson, Maine.....	Appointed 1917-
George W. Anderson, Mass.....	Appointed 1918-

A FEW BIOGRAPHICAL NOTES.

Space allows only a few brief notes as to some of the earlier judges.

JOHN SULLIVAN was born in 1740. He was a delegate to the First Continental Congress in 1774 and 1775. He was a Major-General under Washington from 1776-1779 and distinguished himself throughout the Revolution. In 1780-1781 he was a member of Congress, 1782-1785 Attorney-General of New Hampshire; 1786-1787 President of the State; 1788 Speaker of the New Hampshire House and President of the Con-

vention which ratified the Federal Constitution; 1789 again President of the State and then commissioned District Judge. He was an older brother of James Sullivan, who was successively an associate justice of the Supreme Judicial Court, Attorney-General and Governor of Massachusetts.

JOHN LOWELL was a leading Federalist, a strong anti-slavery man as early as 1773, a member of the committee of thirty to draft the Constitution of Massachusetts in the convention of 1779-1780. William Plumer's copies of notes of Theophilus Parsons of a number of Massachusetts cases between 1773-1783 have just been located in the New Hampshire Historical Society and photostat copies have been made for the Massachusetts State Library. The first case reported involved the slavery issue and Lowell appeared for the alleged slave. This was in 1773 when the Province Laws recognized slavery. In 1783, after the constitution was adopted, the Supreme Judicial Court of Massachusetts decided that under the Bill of Rights slavery could not exist in Massachusetts, although slave sales had been advertized in the newspapers while the constitutional convention was in session. His great-grandson of the same name was also district judge and his great-great-grandson occupies a seat on the same bench to-day. In 1781, John Lowell was a member of Congress and from 1782-1789 a member of the Court of Appeals in Admiralty Cases.

JEREMIAH SMITH, whose name appears for a brief period as a member of the short-lived Circuit Court of 1801-1802 when he was legislated out of office as one of the so-called "midnight" judges by the abolition of the Court, was one of the leading Federalists of his day, who later became Chief Justice of New Hampshire. In that position he contributed to the professional development in New Hampshire as Chief Justice Parsons contributed to the professional development in Massachusetts, at about the same time. (See MASS. LAW QUART., May, 1917, 532-533.) See Morison's "Life of Jeremiah Smith".

GEORGE FOSTER SHEPLEY was the son of Ether Shepley, the fourth Chief Justice of Maine. He was a leader against the Secessionists in the Democratic National Convention in Charleston in 1860. At the outbreak of the Civil War he became Colonel of the 12th Maine volunteers. On the occupation of New Orleans, he was made Military Commandant of the city and gained the confidence both of the inhabitants and of the army. Later, President Lincoln appointed him Military Governor of Louisiana and Major-General. Still later he was in command of the District of Eastern Virginia and then Military Governor of Richmond after its occupation by the Union troops.

ASHUR WARE was born in Sherburne, Massachusetts, in 1782; moved to Portland in 1817; and became the first Secretary of State of Maine. He was appointed District Judge for the District of Maine in 1822 and served for 44 years until 1866. At a time when the law of the sea had received little attention from the courts, Judge Ware was obliged to depend largely on his own resources and scholarly researches and "to become a pioneer in maritime law". As Judge Hale has pointed out in the address already referred to, Judge Ware was one of the great Admiralty judges in the history of the Federal Courts.

For historical information in regard to the Federal Courts in general, see Warren's "The Supreme Court in United States History." Volume I of the "Federal Cases" contains a chronological table showing the succession of Federal judges throughout the country from 1789-1890 or thereabouts. The Circuit Court of 1801 held two sessions in Massachusetts before it was abolished.



JOHN LOWELL
United States District Judge
(*Massachusetts*)
1789-1801
Chief Judge Circuit Court
1801-1802



DAVID SEWALL
Associate Justice Supreme Judicial Court
of Massachusetts 1777-1789
United States District Judge 1789-1818
(*Maine*)

THE THREE DISTRICT JUDGES IN 1789.



JOHN SULLIVAN
United States District Judge
(*New Hampshire*)
1789-1795



CHARLES F. JOHNSON
(*Maine*)
Circuit Judge
1917—



GEORGE H. BINGHAM
(*New Hampshire*)
Circuit Judge
1913—



GEORGE W. ANDERSON
(*Massachusetts*)
Circuit Judge
1918—

UNITED STATES CIRCUIT COURT OF APPEALS 1924.



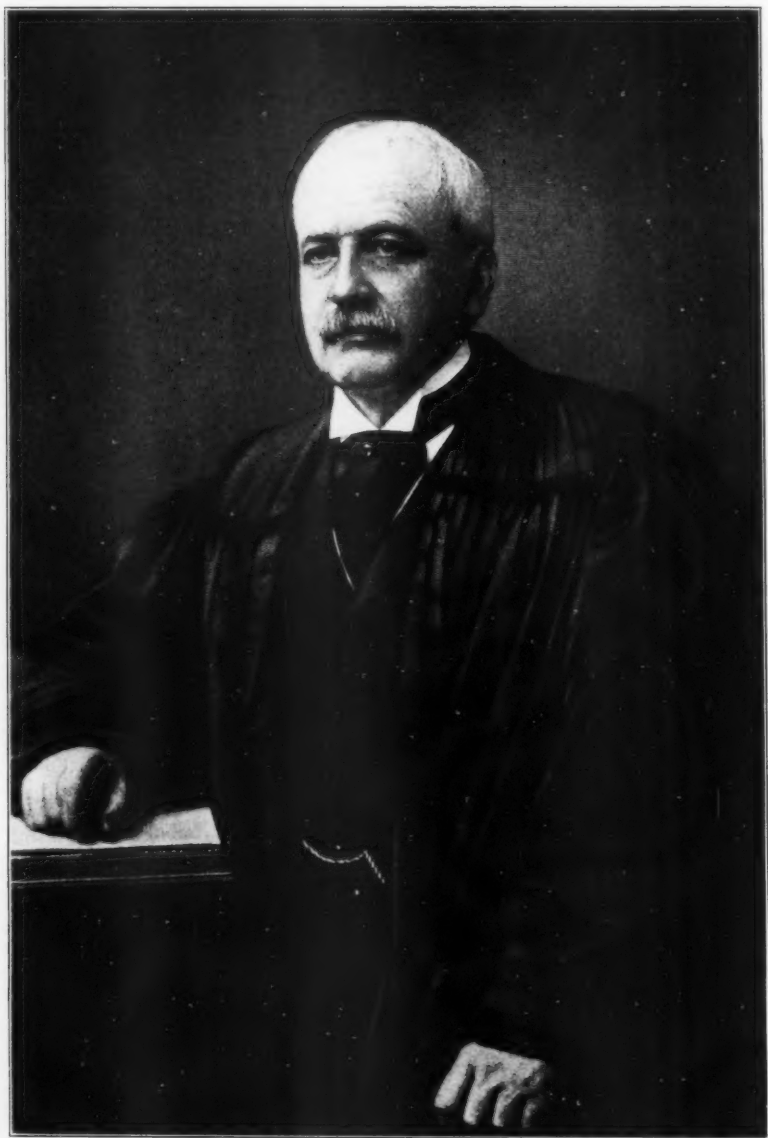
JAMES A. LOWELL
District Judge
(*Massachusetts*)
1922—



JAMES M. MORTON, JR.
District Judge
(*Massachusetts*)
1912—



ELISHA H. BREWSTER
District Judge
(*Massachusetts*)
1922—



CLARENCE HALE
District Judge
(Maine)
1902-1922
(Retired but still in service)



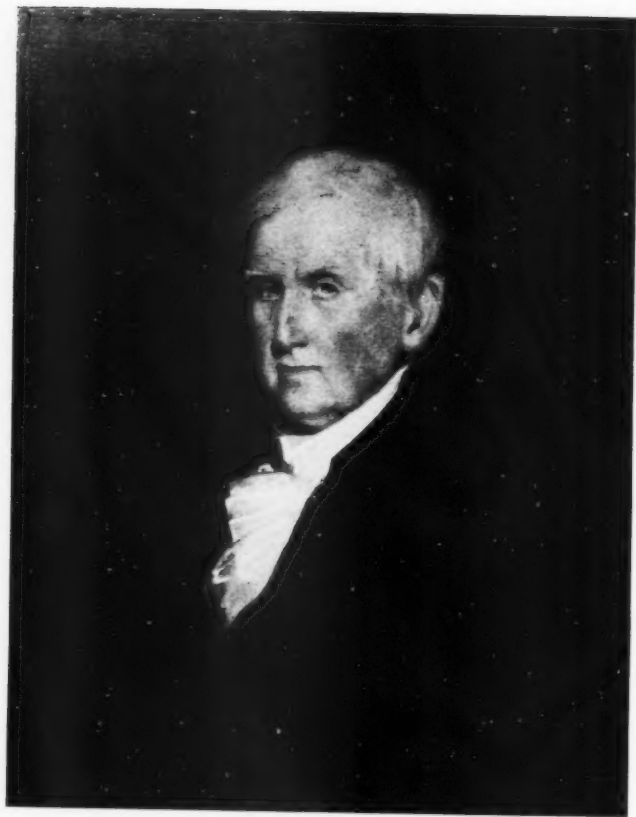
GEORGE F. MORRIS
District Judge
(*New Hampshire*)
1921—



ARTHUR L. BROWN
District Judge
(*Rhode Island*)
1896—



JOHN A. PETERS
District Judge
(*Maine*)
1922—



JOHN DAVIS
District Judge
(Massachusetts)
1801-1841



PELEG SPRAGUE
District Judge
(*Massachusetts*)
1841-1865



JOHN LOWELL
District Judge
(*Massachusetts*)
1865-1878
Circuit Judge
1878-1884



THOMAS L. NELSON
District Judge
(*Massachusetts*)
1879-1898



FRANCIS C. LOWELL
District Judge
(*Massachusetts*)
1898-1905
Circuit Judge
1905-1911



WILLIAM SCHOFIELD
Justice Superior Court
(*Massachusetts*)
1902-1911
Circuit Judge
1911-1912



FREDERIC DODGE
District Judge
(*Massachusetts*)
1905-1912
Circuit Judge
1912-1918



WILLIAM L. PUTNAM
(*Maine*)
Circuit Judge
1892-1917



GEORGE F. SHEPLEY
(*Maine*)
Circuit Judge
1869-1878



LEBARON B. COLT
District Judge
(*Rhode Island*)
1881-1884
Circuit Judge
1884-1913



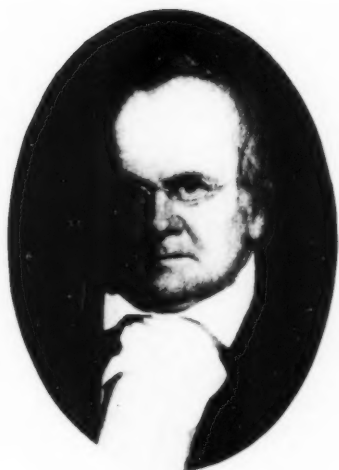
NATHAN WEBB
District Judge
(*Maine*)
1882-1902



GEORGE M. CARPENTER
Associate Justice Supreme Court
of Rhode Island
1882-1885
District Judge
(*Rhode Island*)
1885-1896



EDGAR ALDRICH
District Judge
(*New Hampshire*)
1891-1921



ASHUR WARE
United States District Judge
(Maine)
1822-1866

NOTE

Portraits of the present "Circuit Justice" of the First Circuit, Hon. Oliver Wendell Holmes, and of all the other Justices of the Supreme Court of the United States, appointed from Massachusetts, will be found in the MASSACHUSETTS LAW QUARTERLY for November, 1920.

